LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 13 1966
JOHN F. DAVIS, CLERK

No. 341

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD AND GENERAL ELECTRIC COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

IRVING ABRAMSON
RUTH WEYAND
1126 16th Street, N. W.
Washington, D. C.
Attorneys for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	3
Statement	3
Reasons for Granting the Writ	8
1. Failure Properly to Apply This Court's Decision in *Scofield*	8
2. The Decision Below Is in Conflict With Decisions by the Fifth and Seventh Circuits	11
3. The Right of an Unsuccessful Charging Party to Review Presents an Important Question	15
Conclusion	15
Appendix A—Opinion of the Court Below	1a
Appendix B—Judgment of the Court Below	2a

CITATIONS

CASES:

Albrecht v. NLRB, 7th Cir., 181 F. 2d 652 (1950)	12
Automobile Workers v. Scofield, 382 U.S. 205 (1965)	3, 4, 7, 8, 9, 11, 13
Chandler & Price v. Brandtzen & Kluge, Inc., 296 U.S. 53 (1935)	10
Columbia Gas & Electric Corp. v. American Feed and Power Co., 322 U.S. 379 (1944)	10
Insurance Workers v. NLRB (D.C. Cir., February 28, 1966) 61 LRRM 2415	13
Insurance Workers International Union of America, AFL-CIO v. NLRB, 7th Cir., No. 15,589	14
International Union of Electrical, Radio and Machine Workers, AFL-CIO v. National Labor Relations Board, et al., 382 U.S. 366, No. 87 October Term, 1965	3

Page

Leaver v. K & L Box & Lumber Co., 6 F. 2d 666 (D.C. N.D. Calif. 1925) 10
Local 833, UAW v. NLRB, D.C. Cir., 1962, 300 F. 2d 699 11
Marine Engineers Beneficial Association v. N.L.R.B., 3rd Cir., 1953, 202 F. 2d 546, cert. den., 346 U.S. 819 12
Perfection Mattress & Spring Co. v. NLRB, 5th Cir., 1961, 48 LRRM 2167 12
United Ins. Co. of America v. NLRB, 7th Cir., No. 15,266 14
Western Pacific R.R. Corp. v. Western Pacific R.R. Co., 345 U.S. 247 (1953) 15

STATUTE:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U.S.C. 151 et seq.):

Sec. 8(a)(1) 4, 5, 6, 9, 10, 11
Sec. 8(a)(3) 4, 5
Sec. 8(a)(5) 4, 5
Sec. 10(e) 3
Sec. 10(f) 3, 6, 9, 12

RULES AND REGULATIONS:

National Labor Relations Board, Rules and Regulations, Section 102.8, Subpart A 5

TEXTBOOKS:

Cyc. Fed. Pro., 3rd Ed., Vol. 7, pp. 43-44, Sec. 2441 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD AND GENERAL ELECTRIC COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, International Union of Electrical, Radio and Machine Workers, AFL-CIO, hereafter sometimes called IUE, prays that a writ of certiorari issue to review a final order of the United States Court of Appeals for the Second Circuit which dismissed a petition for review filed by the IUE.

OPINIONS BELOW

The decision and order of the National Labor Relations Board are reported at 150 NLRB 192. The original dismissal by the court below of the IUE's petition for review was without opinion. The per curiam opinion of this Court granting certiorari, vacating the aforesaid order and other orders of the court below and remanding to the court below for reconsideration is reported at 382 U.S. 366. The per curiam opinion (pp. 2a-3a, *infra*) in the court below which after remand by this Court for reconsideration again dismissed the IUE's petition for review is officially reported at 358 F. 2d 292. It is unofficially reported in 61 LRRM 2609.

JURISDICTION

The order of the court below was entered on March 17, 1966. The petition of the IUE for rehearing duly filed was denied on April 14, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and Section 10(e) and (f) of the National Labor Relations Act (29 U.S.C. 160 (e) and (f)).

QUESTION PRESENTED

When the National Labor Relations Board upholds, in part, a union's unfair labor practice charges against an employer, after proceedings in which the union actively participates as a party, but the union believes that the Board has improperly failed to find certain violations of the National Labor Relations Act, as amended, and that the order of the Board fails to provide a satisfactory remedy, may the union be denied review of the order of the Board.

STATUTE INVOLVED

Section 10(f) of the National Labor Relations Act, as amended (29 U.S.C. 160 (f)) provides, in part:

> "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside * * * [T]he court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same exclusive jurisdiction to * * * enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *"

STATEMENT

On January 17, 1966, this Court granted certiorari to review an earlier order in these same proceedings entered by the court below identical in all respects with the order as to which review is here sought. *International Union of Electrical, Radio and Machine Workers, AFL-CIO* v. *National Labor Relations Board, et al.*, 382 U.S. 366, No. 87, October Term, 1965. At the same time this Court vacated the prior order and remanded the case to the court below "for further consideration in light of *Automobile Workers* v. *Scofield*" 382 U.S. 205. Upon further consideration the court below adhered to its earlier position that the petition of the IUE to review the order of the Board should be dismissed. The court below stated:

"We find nothing in *Scofield* that requires us to deny the motion to dismiss" (p. 3a, *infra*).

Certiorari is sought in this case on one of the two questions as to which certiorari was sought and granted when this case was before this Court in No. 87, October Term 1965, namely, whether the *charging party,* which was in part, but not entirely successful before the Board, may be denied review of the final order of the Board despite the fact the Board denied part of the relief which that party had sought.

The denial of part of the relief sought occurred in proceedings initiated by a series of charges filed by IUE asserting that General Electric Company, hereinafter sometimes called GE, had interfered with and coerced its employees in the exercise of their rights to bargain collectively by numerous different acts including undermining the IUE as their bargaining agent by soliciting polls of members and non members of IUE concerning acceptance or rejection of GE's collective bargaining proposals (Case No. 2-CA-7581-1), refusing to supply information essential to intelligent bargaining (Case No. 2-CA-7581-2), offering a separate contract to a substantial segment of its employees, represented by the IUE (Case No. 2-CA-7581-2), and refusing to bargain with regard to the IUE's proposals for a collective bargaining agreement (Case No. 2-CA-7581-4), thereby committing unfair labor practices within the meaning of Section 8(a)(1), (3) and (5) of the National Labor Relations Act, as amended, 29 U.S.C. 158 (a)(1), (3) and (5).

The General Counsel issued a complaint against GE alleging the unfair labor practices charged by IUE. The IUE was a party to all subsequent proceedings before the Trial Examiner and the Board as it had the

right to be under Section 102.8, Subpart A, of the Board's Rules and Regulations. The IUE throughout these proceedings participated on a parity with GE and the Board's General Counsel including the calling and examining of its own witnesses, the cross-examining of witnesses called by other parties, the filing of briefs and exceptions, and the presentation of oral argument to the Board in Washington.

On April 1, 1963, the Trial Examiner found that the Company had engaged in unfair labor practices in violation of Section 8(a)(1), (3) and (5) of the Act and recommended issuance of an order against the Company. The Trial Examiner dismissed a portion of the complaint (Intermediate Report, p. 107, lines 30-31), failed to make certain findings which were requested by IUE, and failed to include in the proposed order a number of remedial provisions which the IUE had requested. The IUE filed exceptions to the Trial Examiner's Intermediate Report in which IUE excepted to the failure to include requested findings and remedy, joined in and adopted the exceptions filed by the General Counsel,[1] filed briefs in support of its exceptions and urged its position in oral argument before the full Board.

Illustrative of the matters raised by the exceptions was the dismissal of independent 8(a)(1) allegations of the complaint based on a letter sent to strikers containing coercive statements, the failure of the Trial Examiner to find that GE's policy and practices ex-

---

[1] These exceptions are printed in full in an appendix to the petition for rehearing filed in the court below, nine copies of which have been supplied to this Court. The IUE's exceptions appear at pages 2a-6a of the petition for rehearing and the General Counsel's exceptions appear at pages 6a-15a.

cluded the IUE from any effective role in bargaining, that GE's communications program undermined and eliminated collective bargaining and established a system of individual bargaining, that an essential element in GE's bargaining policy is to eliminate and break up national level negotiations (see pages 6a-7a, petition for rehearing below) and the failure to include in the order a broad 8(a)(1) cease and desist provision (see *id.*, page 15a) or any prohibitions of the specific types of acts found, or which should have been found, violative of the Act (see *id.*, pages 3a-6a).

On December 16, 1964, the Board issued its Decision and Order in which the Board adopted the Intermediate Report and Recommended Order of the Trial Examiner and rejected all the IUE's exceptions to the Report. To obtain review of the denial of the relief sought, the IUE filed a petition in the United States Court of Appeals for the District of Columbia Circuit on December 16, 1964, seeking review of the Board's order. The Board filed an answer to that petition for review, in which the Board (Ans., par. 2) expressly admitted that the IUE was a person aggrieved by the Board's denial of relief, within the meaning of Section 10(f) of the Act. At no time prior to the remand by this Court did GE ever seek to intervene in that proceeding to seek dismissal of the IUE's petition for review.

On December 16, 1964, GE filed a petition in the United States Court of Appeals for the Seventh Circuit to review the Board's order. On February 15, 1965, the Board filed in the court below the Board's petition for enforcement of its order against GE, which became Case No. 29,502 in the court below. The Board then filed motions in both the United States

Court of Appeals for the District of Columbia Circuit and in the United States Court of Appeals for the Seventh Circuit requesting the transfer to the court below of the respective petitions to review filed by IUE and GE. The Seventh Circuit Court of Appeals transferred GE's petition to the court below on February 18, 1965, which was docketed in the court below as Case No. 29,576. The District of Columbia Court of Appeals on March 12, 1965, transferred to the court below the IUE's petition to review the Board's order which was docketed in the court below as Case No. 29,577.

GE moved in the court below to dismiss Case No. 29,577, the IUE's petition for review, as well as opposed the IUE's motions to intervene in Case No. 29,502, the Board's enforcement case, and in Case No. 29,576, GE's review case. The court below denied IUE's motions for leave to intervene and dismissed Case No. 29,577, the IUE's petition to review, upon the stated ground that IUE was not an aggrieved party. Both actions were taken without opinion.

The IUE filed a petition for a writ of certiorari to review both the denials of intervention and the dismissal of its petition to review. *International Union of Electrical, Radio and Machine Workers, AFL-CIO* v. *National Labor Relations Board et al,* 382 U.S. 366 (No. 87, October Term 1965). This Court on January 17, 1966, granted certiorari, vacated the judgments and remanded to the court below for further consideration in the light of *Automobile Workers* v. *Scofield,* 382 U.S. 205.

Upon remand the Board moved to consolidate the Board's enforcement case, GE's review case and IUE's review case. The IUE again filed motions to

intervene in Case No. 29,502, the Board's enforcement case, and in Case No. 29,576 GE's review case. GE filed a cross-motion to intervene in Case No. 29,577, the IUE's review case, and to dismiss that case on the ground that IUE is not an aggrieved party. The court below on March 17, 1966, granted both GE's motion to intervene in Case No. 29,577, the IUE's review case, and GE's motion to dismiss Case No. 29,577, the IUE's petition for review. In an accompanying per curiam opinion, the court below stated that it adhered to its previous order dismissing the IUE's petition for review and that it found "nothing in *Scofield* that requires" a denial of the motion to dismiss (p. 3a, *infra*). The court stated (p. 3a, *infra*):

> "If No. 29,577 were not dismissed, we would consolidate it with the other two cases. That being so, the Union will not be adversely affected by a dismissal of No. 29,577 because it will be permitted as intervener to raise all relevant issues upon review of the other two cases. Since there are consequences which may flow from a finding of 'aggrieved' status that have not been fully presented and considered in this case, see e.g. *Insurance Workers* v. *N.L.R.B.* (D.C. Cir.) No. 19,555, (February 28, 1966), we are loath to take an action that is not necessary to protect the interests of the Union."

On April 1, 1966, IUE filed a petition for rehearing in the court below which was denied on April 14, 1966.

REASONS FOR GRANTING THE WRIT

1. Failure Properly To Apply This Court's Decision in Scofield

The prior order of the court below dismissing IUE's petition to review was vacated and the case was remanded "for further consideration in light of *Auto-*

mobile Workers v. *Scofield,*" 382 U.S. 366. Although the *Scofield* opinion issued in two cases, each of which involved issues of the right of a union to intervene, this Court expressly enunciated the rule governing the status as an aggrieved party for purposes of filing a petition for review under Section 10(f) of the National Labor Relations Act, 29 U.S.C. 160 (f), of a union which has filed charges which have not been sustained in full by the Board. Thus this Court in *Scofield* stated (382 U.S. at page 210):

> "* * * if the Board determines that a complaint should be dismissed, the charging party has a statutory right of review as a 'person aggrieved'. A hybrid situation occurs when the Board dismisses certain portions of the complaint and issues an order on others. * * * the charging party is aggrieved with respect to the portion of the decision dismissing the complaint."

Such a hybrid situation is present here. The Board here dismissed portions of the complaint and issued an order on others. The Trial Examiner recommended "dismissal of the independent 8(a)(1) allegation based on the October 5 letter" (I.R. 107, lines 30-31). Although the IUE and the General Counsel duly filed their objections to this recommendation (Exception 36 of the General Counsel, which was adopted by the IUE, see exceptions reprinted in appendix to petition for rehearing, pp. 3a, 14a), the Board denied this as well as all the numerous other exceptions filed by the IUE.

The National Labor Relations Board has always agreed with IUE that the IUE is a "person aggrieved" by the Board's order. The Board in its answer (par. 2) to IUE's petition for review formally acknowledged that its order aggrieved the IUE.

The view of the court below that IUE "will not be adversely affected by a dismissal" of its petition for review "because it will be permitted as intervener to raise all relevant issues upon review of the other two cases" rests either upon a misconception of the facts respecting the issues preserved by IUE by its exceptions to the Intermediate Report and which it desires to present to the court in its review proceedings, or upon a misconception of the scope of review open to and the rights of an intervener. It is a uniformly enforced rule that an intervener cannot enlarge the issues between the original parties to the suit. *Columbia Gas & Electric Corp.* v. *American Feed and Power Co.*, 322 U.S. 379, 383 (1944); *Chandler & Price* v. *Brandtzen & Kluge, Inc.*, 296 U.S. 53, 56-59 (1935); *Leaver* v. *K & L Box & Lumber Co.*, 6 F. 2d 666, 667 (D.C. N.D. Calif. 1925); Cyc. Fed. Pro., 3rd Ed., Vol. 7, pp. 43-44, Sec. 2441. In the instant proceedings, the issues framed between GE and the Board in their respective review and enforcement cases limit the issues to whether the Board's findings and order should be set aside or enforced. The IUE by its petition for review sought to have that portion of the complaint which was dismissed upheld, additional findings of unfair labor practices made, a broad 8(a)(1) order instead of a limited one entered, and many kinds of conduct by GE which were found to be unfair labor practices and other kinds of conduct by GE which should have been found violative of the Act specifically prohibited by the order. None of these issues are open to it under the issues between GE and the Board.

And completely apart from the fact that as an intervener IUE could not raise new issues outside the scope of the enforcement and review issues between GE and

the Board, the rights of participation in oral argument, briefing, determination of issues, etc., accorded to an intervener are so much narrower than those accorded to the petitioner or respondent, as to constitute a substantial adverse affect. The standard rule is that intervener's right to participate in oral argument is wholly discretionary and the intervener usually must share time of the party on whose side the intervener is. But IUE with respect to its desire to have the Board sustain the portion of the complaint which it dismissed, to enter a broad 8(a)(1) order, to make additional findings and award further relief, is on the side of neither GE nor the Board.

Hence, we submit that the court below was clearly wrong in holding that its grant of permission to IUE to intervene in the GE review case and the Board enforcement case satisfied its duty under this Court's remand order. Under the rule stated by this Court in *Scofield,* IUE was entitled to petition for review. The court below failed to obey the remand when it again dismissed the petition for review.

2. The Decision Below Is in Conflict With Decisions by the Fifth and Seventh Circuits

Petitions for review brought by charging parties to review Board orders denying in whole or part relief sought have been repeatedly entertained without any challenge so far as appears from the reported decisions. E.g., *Local 833, UAW* v. *NLRB,* 300 F. 2d 699 (D.C. Cir. 1962). We have found only two cases in which motions have been made to dismiss such petitions for review where the relief denied had been requested and litigated before the Board. In both cases the motion to dismiss was denied with express holdings

by the court that a charging party which was unsuccessful in whole or in part before the Board was a "person aggrieved" within the meaning of Section 10(f) of the National Labor Relations Act.

In *Perfection Mattress & Spring Co.* v. *NLRB,* 5th Cir., 1961, 48 LRRM 2167, an employer which had filed charges with the Board and secured an order requiring the union to cease and desist from engaging in or inducing any employee to engage in a strike or refusal to handle certain commodities (129 NLRB 1014, 1024) filed a petition to review the denial by the Board of the employer's request for a more specific and detailed order describing the acts of picketing to be prohibited. In denying a motion to dismiss the employer's petition for review, the Fifth Circuit stated (48 LRRM at 2167):

> "We consider that such denial of relief sought by petitioner made petitioner an aggrieved person within the contemplation of law."

Similarly, the Seventh Circuit in *Albrecht* v. *NLRB,* 181 F. 2d 652, 655 (1950) denied a motion to dismiss and held that an employee who had filed charges with the Board, secured the issuance of a complaint and pursued the relief sought through appropriate Board proceedings was a person aggrieved entitled to file a petition to review when the Board denied the requested relief. Compare to the same effect *Marine Engineers' Beneficial Association* v. *N.L.R.B.,* 3rd Cir., 1953, 202 F. 2d 546, 549-550, certiorari denied, 346 U.S. 819.

The express statement by this Court in its opinion in *Automobile Workers* v. *Scofield,* 382 U.S. 205, 210, should have sufficed to settle this conflict between the federal courts of appeals. The order of the court be-

low in this case in again dismissing IUE's petition for review after a remand based on the *Scofield* case and the failure of the court below to follow this statement, reopens the conflict and requires that this Court settle the conflict by granting certiorari in this case and reversing the order below.

The court below cited *Insurance Workers* v. *NLRB* (D.C. Cir., February 28, 1966), 61 LRRM 2415 as illustrating that "there are consequences which may flow from a finding of 'aggrieved' status that have not been fully presented and considered in this case". The only consequence of aggrieved status suggested by the *Insurance Workers'* case is the limited right to be possibly the party to select the forum in which all review and enforcement proceedings shall take place, a right achieved only by filing a petition to review before any other party files either enforcement or review proceedings. Although there was at one time a dispute in the instant case as to the court in which enforcement or review proceedings should be heard, that issue is no longer in this case. Hence, so far as the instant case is concerned, holding the IUE an aggrieved person has no consequence with respect to forums.

In the *Insurance Workers* case, the Court of Appeals for the District of Columbia (61 LRRM at 2417) held that the facts there did not present even the "hybrid situation" discussed by this Court in its opinion in *Scofield*. The facts in the *Insurance Workers* case led the Court of Appeals for the District of Columbia to hold that the charging party there had been afforded the relief sought respecting the controlling issue in the case. Indeed, as the Court of Appeals viewed the facts, all the relief sought by the Insurance Workers

necessarily flowed from the Board's findings and order and hence the Insurance Workers were not in fact aggrieved. However the Court of Appeals did not dismiss the Insurance Workers' petition for review, but merely held there was insufficient aggrieved status to entitle the Insurance Workers to select the court as against the employer which filed its petition to review in the Seventh Circuit the same day but a few hours later. Accordingly, the Court of Appeals for the District of Columbia Circuit denied the motion to dismiss without prejudice to the right to renew the motion in the Seventh Circuit and transferred the case to the Seventh Circuit. The District of Columbia Court expressly stated that it did "not undertake to bind the Seventh Circuit on the Union's claim that it is a person aggrieved."

Both the employer's petition to review and the Insurance Workers' petition to review are now pending in the Seventh Circuit docketed respectively as *United Ins. Co. of America* v. *NLRB,* No. 15,266 and *Insurance Workers International Union of America, AFL-CIO* v. *NLRB,* No. 15,589. On April 7, 1966, the Seventh Circuit entered an order providing that "'It is hereby ordered that the motion of United Insurance Company of America to dismiss the petition for review filed by Insurance Workers International Union, AFL-CIO be taken with the case on the merits."

Should the order below be left unreviewed, the conflict in the circuits will be reopened. The confusion created by the order below should be dissipated by the granting of certiorari and a prompt reversal.

3. The Right of an Unsuccessful Charging Party To Review Presents an Important Question

The right of a charging party to judicial review of a Board order, as a "person aggrieved", if the Board refuses any of the relief requested by the charging party, presents a question of importance to the orderly administration of justice in the federal courts. The need for such orderly administration fully warrants this Court's review. See *Western Pacific R.R. Corp.* v. *Western Pacific R.R. Co.*, 345 U.S. 247, 260.

CONCLUSION

It is submitted that the writ should be granted, the judgment below reversed and the case remanded with directions to deny the motion to dismiss the IUE's petition for review.

Respectfully submitted,

IRVING ABRAMSON
RUTH WEYAND
1126 16th Street, N. W.
Washington, D. C.
Attorneys for Petitioner

July 12, 1966